

# **EXHIBIT 4**

**STATE OF CALIFORNIA  
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION**

**TO:** Nexo Group  
Nexo Inc.  
Nexo Capital Inc.  
251 Little Falls Drive  
Wilmington, Delaware 19808

**DESIST AND REFRAIN ORDER**

**(For violations of California Corporations Code section 25110)**

The Commissioner of Financial Protection and Innovation (Commissioner), based on information and belief, finds that:

1. The Nexo Group (Nexo) was founded in 2018. It comprises business entities organized primarily in European countries and territories, including but not limited to Nexo Inc. and Nexo Capital Inc.

2. Nexo Inc. is a Cayman Islands corporation formed in 2018. Nexo Inc. is the parent company of all Nexo companies, including Nexo Capital Inc., and it is the central entity through which these other companies are generally managed.

3. Nexo Capital Inc. is a Cayman Islands corporation formed in 2018.

4. Nexo operates a crypto platform that offers crypto interest accounts, self-directed and over-the-counter trade execution, and lending, borrowing, and exchange services, among others, to retail and institutional customers. Nexo provides these products and services primarily through Nexo Capital Inc.

5. Since 2018, Nexo Capital Inc., on behalf of Nexo, has conducted business in the United States through Nexo's mobile application and public website at <http://www.nexo.io/>. Nexo Capital Inc. owns both the mobile application and website.

6. Since at least June 2020, Nexo Capital Inc., on behalf of Nexo, has offered and sold unqualified securities, in the form of Earn Interest Product accounts, to the United States public at large and to California residents.

1           7.       The Earn Interest Product is Nexo's crypto interest account program.

2           8.       Earn Interest Product accounts are offered exclusively by Nexo Capital Inc. through  
3 Nexo's smartphone application and public website; prospective investors can open accounts on  
4 either.

5           9.       Under the Earn Interest Product program, investors deposit certain crypto assets into  
6 their accounts and maintain a minimum amount of those assets there.

7           10.      Investors also authorize Nexo, at its sole and absolute discretion, to do the following:

8               a.      Aggregate investors' deposits of crypto assets.

9               b.      Combine these deposited crypto assets with similar assets associated with other Nexo  
10 products or otherwise held by Nexo.

11              c.      Convert, pledge, repledge, hypothecate, rehypothecate, sell, lend, or otherwise  
12 transfer, dispose of, or use any amount of crypto assets from that pool of deposits for  
13 any period of time.

14           11.      Nexo's uses of the deposited crypto assets are performed in Nexo's name, with  
15 attendant rights of ownership.

16           12.      Nexo has no obligation to retain a like amount of these crypto assets or comparable  
17 ones in its possession or control to fully cover investors' deposits.

18           13.      Investors assume all risk related to their Earn Interest Product accounts.

19           14.      In return, investors earn daily interest on their deposited crypto assets in the form of  
20 cryptocurrencies, stablecoins, or tokens. Investors begin to accrue interest twenty-four hours after  
21 making their deposits.

22           15.      Investors elect to earn either compound interest in kind or simple interest in Nexo's  
23 native tokens, NEXO tokens. Nexo automatically pays interest to the savings wallets for investors'  
24 accounts.

25           16.      On its platform, Nexo publishes a list of crypto assets that it transacts in for the Earn  
26 Interest Product program. That list states, among other information, each of these assets' annual  
27 interest rate and the minimum amount of each asset that an investor must maintain in their account to  
28 receive interest payments from Nexo.

1 17. Nexo offers Earn Interest Product accounts under either a flex or fixed term.

2 18. An investor with a flex-term account can withdraw their deposited crypto assets at any  
3 time in accordance with Nexo's terms and conditions.

4 19. Under a fixed-term account, an investor generally cannot withdraw their deposited  
5 crypto assets until the expiration of the agreed-upon term. At a minimum, an investor can choose  
6 one, three, or twelve months for their fixed term, depending at least in part on which crypto assets  
7 were deposited.

8 20. Interest payments are made daily for flex-term accounts and at the end of the relevant  
9 term for fixed-term accounts.

10 21. For a fixed-term account, an investor can opt into Nexo's automatic renewal feature to  
11 automatically maintain their current crypto assets in their account for another identical fixed term at  
12 the end of their original term.

13 22. Nexo's terms and conditions for the Earn Interest Product apply to automatically  
14 renewed fixed-term accounts, too.

15 23. If an investor with an Earn Interest Product fixed-term account does not elect to  
16 automatically renew their fixed term, their account automatically turns into a flex-term one at the end  
17 of their fixed term.

18 24. The annual interest rates for deposited crypto assets in Earn Interest Product accounts  
19 have been upward of at least 36%, depending on which crypto assets were deposited, whether the  
20 account operates under a flex or fixed term, and the loyalty tier of the investor's account, among  
21 other things.

22 25. Nexo has promoted its services and products, including Earn Interest Product  
23 accounts, in the United States through its smartphone application, website, blog, and ads on Facebook  
24 and Google, among other media networks.

25 26. Nexo finances its interest payments to Earn Interest Product investors through revenue  
26 from its business activities, including lending, borrowing, trading, and exchange services, among  
27 others, to retail and institutional customers. Investors neither provide nor facilitate these activities or  
28 services.

27. Whether Earn Interest Product investors receive interest payments depends entirely on the success of Nexo as a business and its managerial and entrepreneurial efforts. These investors do not engage in any substantive program activities beyond depositing crypto assets.

28. Nexo's interest payments to Earn Interest Product investors function like those for pooled investment vehicles. But it appears that Nexo, Nexo Inc., and Nexo Capital Inc. are not protected by investor- and consumer-protection organizations, such as the Securities Investor Protection Corporation and the Federal Deposit Insurance Corporation.

29. Nexo has represented that since February 19, 2022, it has ceased offering and selling Earn Interest Product accounts to U.S. residents. Nexo has further claimed that since then, it has disallowed additional deposits into existing Earn Interest Product accounts held by U.S. investors. However, Nexo allows an investor with an Earn Interest Product fixed-term account to enroll in Nexo's automatic renewal feature. Nexo's offer of that option to an investor, along with the investor's decision to enroll, constitutes an offer and sale of a security.

30. More than one California resident opened their Earn Interest Product fixed-term account before February 19, 2022 and opted into Nexo's automatic renewal feature. For those California investors whose fixed terms then expired on or after February 19, 2022, their accounts were automatically renewed for another identical term at the end of their respective original term.

31. Nexo pooled the crypto assets in these California investors' renewed Earn Interest Product fixed-term accounts with similar assets from other Earn Interest Product accounts, associated with other Nexo products, or otherwise held by Nexo. Nexo then lent out this pool of crypto assets to borrowers, among other uses.

32. In return, these California investors with Earn Interest Product fixed-term accounts, whose fixed terms had expired on or after February 19, 2022 and whose accounts were automatically renewed for another fixed term, earned further interest beginning on or after February 19, 2022 for their deposited assets.

33. Therefore, Nexo did not cease offering and selling Earn Interest Product accounts to California residents on February 19, 2022. To this day, Nexo continues to offer and sell these securities to California residents.

34. As of July 31, 2022, over 18,000 California residents have active Earn Interest Product flex- or fixed-term accounts; these accounts collectively hold investments totaling at least \$174,800,000.

35. The Commissioner has issued no permit or other form of qualification authorizing Nexo, Nexo Inc., or Nexo Capital Inc. to offer or sell securities, including Earn Interest Product accounts, in California. Nor are the offers and sales of these securities excepted, exempt, or otherwise not subject to qualification.

Based on the foregoing findings, the Commissioner is of the opinion that the Earn Interest Product accounts offered and sold by the Nexo Group, Nexo Inc., and Nexo Capital Inc. (1) are securities, in the form of investment contracts, under California Corporations Code section 25019; (2) are being offered and sold in this state in issuer transactions; (3) are subject to qualification under the Corporate Securities Law of 1968; and (4) have been offered and sold without prior qualification, in violation of California Corporations Code section 25110.

Pursuant to California Corporations Code section 25532, the Nexo Group, Nexo Inc., Nexo Capital Inc., and their affiliates are HEREBY ORDERED to desist and refrain from the further offer and sale of securities in California, including but not limited to Earn Interest Product accounts, unless such sale has been qualified under the law, or unless such securities or transactions are excepted, exempt, or otherwise not subject to qualification.

This Order is necessary, in the public interest, to protect investors and is consistent with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

Dated: September 26, 2022  
Los Angeles, California

CLOTHILDE V. HEWLITT  
Commissioner of Financial Protection and Innovation



By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division